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6                   UNITED STATES DISTRICT COURT  
7                   WESTERN DISTRICT OF WASHINGTON  
8                   AT SEATTLE

9                   BOBBY WELLS,

10                  Plaintiff,

11                  Case No. C12-1697-TSZ-JPD

12                  v.

13                  CLAUDIA BALDUCCI, *et al.*,

14                  Defendants.

15                  REPORT AND RECOMMENDATION

16                  INTRODUCTION AND SUMMARY CONCLUSION

17                  This is a civil rights action brought under 42 U.S.C. § 1983. Plaintiff Bobby Wells  
18                  alleges in his second amended complaint that he was transferred from the King County Regional  
19                  Justice Center (“RJC”) jail facility in Kent, Washington to the King County Correctional Facility  
20                  in Seattle, Washington in retaliation for his use of the RJC’s grievance system. Plaintiff  
21                  identifies the following defendants in his second amended complaint: the King County  
22                  Department of Detention; Jail Director Claudia Balducci; Classification Supervisor Brien  
23                  O’Farrell; Correctional Sergeant Stephanie Hansen; and Correctional Officers Eddie Sylvas,  
                       Timothy Feichtner, Mgoc-Quynh Le, and J. Mendoza. Plaintiff seeks relief in the form of an  
                       order directing the King County Department of Adult and Juvenile Detention to stop the practice

1 of dispensing discipline without due process. Plaintiff also asks that defendants be directed to  
2 pay all fees associated with this civil action.

3 Defendants now move to dismiss this action. Plaintiff has filed a responsive brief  
4 opposing defendants' motion to dismiss, and defendants have filed a reply brief in support of  
5 their motion. The Court, having reviewed defendants' motion, all briefing of the parties, and the  
6 balance of the record, concludes that defendants' motion to dismiss should be granted and  
7 plaintiff's second amended complaint, and this action, should be dismissed with prejudice.

8 DISCUSSION

9 Defendants move to dismiss this action pursuant to Rule 12(b)(6) of the Federal Rules of  
10 Civil Procedure for failure to state a claim upon which relief may be granted. An action may be  
11 dismissed for failure to state a claim only if it appears beyond doubt that the plaintiff can prove  
12 no set of facts in support of his claim which would entitle him to relief. *Keniston v. Roberts*, 717  
13 F.2d 1295 (9th Cir. 1983). "Dismissal can be based on the lack of a cognizable legal theory or  
14 the absence of sufficient facts alleged under a cognizable theory." *Balistrieri v. Pacifica Police*  
15 *Dept.*, 901 F.2d 696, 699 (9<sup>th</sup> Cir. 1988). On a motion to dismiss, material allegations of the  
16 complaint are taken as admitted and the complaint is to be liberally construed in favor of the  
17 plaintiff. *Keniston*, 717 F.2d at 1300.

18 Defendants argue in their motion to dismiss that plaintiff's case is now moot because the  
19 only redress sought by plaintiff in his second amended complaint is an injunction prohibiting the  
20 King County Department of Adult and Juvenile Detention from dispensing discipline without  
21 due process and plaintiff is no longer in the custody of King County.

22 "Those who seek to invoke the jurisdiction of the federal courts must satisfy the  
23 threshhold requirement imposed by Article III of the Constitution by alleging an actual case or

1 controversy.” *City of Los Angeles v. Lyons*, 461 U.S. 95, 101 (1983). The “case or controversy”  
 2 requirement restricts federal jurisdiction to those cases where the plaintiff can demonstrate that  
 3 “he has sustained or is immediately in danger of sustaining some direct injury as the result of the  
 4 challenged official conduct and the injury or threat of injury must be both real and immediate.”  
 5 *Id.* at 101-02 (internal quotations omitted). “Past exposure to illegal conduct does not in itself  
 6 show a present case or controversy regarding injunctive relief . . . if unaccompanied by any  
 7 continuing, present adverse effects.” *O’Shea v. Littleton*, 414 U.S. 488, 495-96 (1974).

8       A claim becomes moot “when the issues presented are no longer live or the parties lack a  
 9 legally cognizable interest in the outcome.” *Alvarez v. Hill*, 667 F.3d 1061, 1064 (9<sup>th</sup> Cir. 2012).  
 10 An inmate’s release from custody generally moots claims for injunctive relief relating to prison  
 11 policies because “the released inmate is no longer subject to the prison conditions or policies he  
 12 challenges.” *Id.* The Ninth Circuit has explained that any injunctive relief ordered in an  
 13 inmate’s favor after that inmate has been removed from the environment in which he is subjected  
 14 to the challenged policy or practice “would have no practical impact on the inmate’s rights and  
 15 would not redress in any way the injury he originally asserted.” *Id.* at 1065.

16       It is clear from plaintiff second amended complaint that he is no longer in the custody of  
 17 King County but is instead in the custody of Washington Department of Corrections. Enjoining  
 18 the conduct of King County as this juncture would not redress the injury asserted by plaintiff in  
 19 his second amended complaint. Accordingly, this Court must conclude that the instant action is,  
 20 in fact, moot.

21       Plaintiff asserts in his response to defendants’ motion that the case is not moot because he  
 22 has incurred costs as a result of having to seek relief in this Court for defendants’ alleged  
 23 unconstitutional conduct. However, plaintiff offers no authority to support this assertion and this

1 Court is aware of none. As defendants correctly point out, the costs of bringing a lawsuit are  
2 recoverable only by a prevailing party. *See Fed. R. Civ. P. 54(d)*. Plaintiff cannot be deemed a  
3 prevailing party given this Court's conclusion that his claim is moot. *See Brown v. Mason*, 431  
4 Fed.Appx. 528, 529 (9<sup>th</sup> Cir. 2011). Accordingly, plaintiff's suggestion that a live case or  
5 controversy exists simply because he incurred costs in initiating this action is without merit.

6 CONCLUSION

7 For the reasons set forth above, this Court recommends that defendants' motion to  
8 dismiss be granted and that plaintiff's second amended complaint, and this action, be dismissed  
9 with prejudice. A proposed Order accompanies this Report and Recommendation.

10 DATED this 22nd day of October, 2013.

11   
12 JAMES P. DONOHUE  
13 United States Magistrate Judge